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File No. O. Khoti /41

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Legal **DEPARTMENT**

A. **BRANCH**

Subject:—

Opinions under the Khoti Settlement

Act 1880.

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24/4.

Office of the R. L. A.

Paragraph 2 of section 144 of the Bombay Land Revenue code, 1879, provides inter alia that all surplus profits of the land attached, beyond the cost of such attachment and management, including the payments of land revenue etc. shall be kept in deposit for the eventual benefit of the person or persons entitled to the same or paid to the said person or persons from time to time as the Collector may direct. This section contemplates that the amount should be paid to the person or persons entitled to the same. In this case if the whole Khoti faida is paid to the petitioners it will not give a valid discharge to Government and the other co-sharers would still be entitled to enforce their claim against Government. Even if the petitioners execute an indemnity bond, such bond can only be enforced by recourse to a civil court. There are a number of co-mortgagees and if the pettioners do not pay them their shares, they will demand the shares from Governmer and the contract of indimnity will then have to be enforced by recourse to a court of law. This would involve Government in litigation which should be avoided. In the circumstances the best course will be to ask the petitioners to approach a civil court for getting their shares defined.

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18/4.

Remembrancer of Legal Affairs.

U. R. to the R. D. No. 3562 dated the 22nd April 1941.

M. V. V.
24/4.

Office of the R.L.A.

It has been held by the High Court that it is lawful for Government to levy khot fayda in khoti village under attachment (see 3 B.H.C.R. p.132 at pp.148-149 and 7 B.H.C.R. (A.C.J.) p.41). It appears also from the copy of a plaint forwarded by Mr. Bhate that no injunction has been asked for restraining Government from recovering khot fayda in respect of such lands. Consequently Mr. Bhate's first request should not be granted. If ultimately the attachment is held to be unlawful Government will have to refund the fayda to the khot; but that is a matter which will depend upon the decision of the civil court. Pending the decision of the civil court however there is no reason why Government should not recover the khot fayda.

2. The second request of Mr. Bhate is that whatever khot fayda has been recovered hitherto in villages under attachment should be refunded to khots. Khots have no legal claim to the restoration of khot-faydas collected b Government agency while their villages are under attachment for refusal to sign their kabulayats (see G.R. R.D. No. 9758, dated 12th October 1906). Consequently Mr. Bhate's second request should also be refused.

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Remembrancer of Legal Affairs.

U.R. to R.D. No.4115 dated the 6th May 1941

M.V.V.
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R.L.A.'s Office.

The rights and liabilities of a khot are clearly stated in the judgment of the High Court in Appeal No.82 of 1953. The main liability of the khot is to pay land revenue, while his main rights are to recover (a) assessment from Dharekaris and (b) assessment plus khot-fayda from the other tenants of the khoti lands. These rights and liabilities of the khot are mentioned in the agreement executed by him every year. The rights and liabilities always go togetner, for as stated in the judgment of the High Court, "As a remuneration for the liabilit undertaken by the khot to secure the Government revenue of the whole village, he is clothed with certain rights and privileges." In this case, however, the High Court has decided that the right to receive khot-fayda now vests in Mr. Sathe(the successor in title of the plaintiff, Mr. Vani), while all the other rights and privileges of the khot vest in Mr. Patki. In its judgment the High Court has observed as follows:-

> "There is no prayer clause in the plaint asking the Court to give any directions to the 1st. defendant (Government) as regards the acceptance of any kabulayat from the plaintiff. But in view of defenda No.3 (Mr.Patki)'s statements quoted above, I do not see any reason why the Government should not accept a kabulayat from the plaintiff as regards the right to collect the khot-fayda which he has acquired, of course with the necessary modifications, ommissions and additions in the usual terms of the kabulayat as may be found suitable."

These observations of the High Court clearly contemplate that Government should in this case take two agreements, one from the plaintiff, (Mr.Vani and now Mr. Sathe, Mr. Vani's ------

successor in title) and another from defendant No.3 (Mr.Patki). The final order of the High Court does not however contain any direction against Government requiring it to accept an agreement from the plaintiff. But as far as possible, Government should try and give effect to these observations of the High Court. as all the three parties, Government, Mr.Patki and Mr. Sathe's predecessor-in- title, Mr. vani, were parties in appeal before the High Court. If possible, Government should therefore take (a) one kabulayat from Mr. Sathe entitling him to recover the khot-fayad from the tenants of the khoti lands other than Dharekaris, subject to the usual limitations imposed in the case of such lands under section 38 of Act I of 1865, and (b) another kabulayat from Mr. Patki in the usual form, but without the clauses entitling him to recover khot-fayda from his tenants. R.D. should in consultation with the Commissioner consider whether this course would be practicable.

Sd.

Remembrancer of Legal Affairs.

U.R. to R. D. No.4626 dated 21/5/1941.

M.V.V.
24/4.

Office of the R.L.A.

The question for the Remembrancer of Legal Affairs' consideration is whether Khoti faida in Kabulayati Khoti villages in Kolaba District under Government attachment either for failure of the Khots to pass the annual Kabulayat or to collect and pay land revenue of the village, can be recovered by coercive process under section 187 of the Bombay Land Revenue code, 1879.

2. The position and status of the Kabulayati Khots of Kolaba has been settled by the High Court in the case of Gangati Gopal vs. Secretary of State, I.L.R. 48 Bom. 699 and it has been held that they are hereditary farmers of the revenue of their Khoti villages and are entitled to hold the villages on their entering every year into the customary kabulayats, see also 5 B.L.R. page 153 at pages 140-149. The Khots are entitled to recover from their tenants, other than Dharekaris assessment, local fund cess and khoti faida. This faida is nothing but simple remuneration allowed to the khot for the risk and trouble of collecting the revenue. When the village is under Government management, Government retains this khoti faida or surplus profits. The Khot is not entitled to this faida (please see R.L.A.'s No. 3977, dated the 7th December 1927 and 7 Bom. H.C.R. (A.C.J.) 41). As this "faida" is income accruing to Government from lands in the Khoti village, it can be regarded as "land revenue". There is no definition of the term 'Land Revenue' in the Bombay Land Revenue Code, but taking it in its plain meaning land revenue must be taken to mean 'money payable to Government in respect of land'," See Secretary of State vs. Govardhandas, A.I.R. 1931 Bom. 464. (Page 21 of Gupte's Land Revenue Code-2nd Edition). In Jinobhai Motherbhai vs. the Collector and T.S.Officer (38 B.L.R. at page 418) Macleod C.J. has observed: "the meaning of the term "land revenue" in section 150, Land Revenue Code, could not be restricted to one particular kind of land revenue ~~taxes~~ that is to say assessment, so that if any other kind of revenue is payable to Government by

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any person on account of any land held by or vested in him and he falls into arrears in payment of such revenue, it cannot be recovered from him under section 150". Land revenue therefore does not mean only one kind of land revenue i.e. assessment but any kind of revenue from land payable to Government note dated 28th March 1941, Khoti faida can be looked upon as miscellaneous land revenue, It can therefore be recovered in the manner provided in section 187, land revenue code.

3. In Government Resolution, Revenue Department, No. 5710/28, dated 28th September 1937, what Government sanctioned was remission in respect of authorised arrears of ordinary agricultural land revenue. In the case of Mr. Dhamankar, the Bombay Revenue Tribunal held that the arrears of Khoti faida are neither authorised nor ordinary land revenue for the purpose of remission under Government Resolution, Revenue Department, No, 5710/28, dated 28th September 1937. The decision of the Bombay Revenue Tribunal is restricted to the interpretation of the Government Resolution of 1937 and will not apply in the present case.

4. It appears that section 187, Land Revenue Code, has been hitherto resorted to by Government for recovering khot faidas and no objection has so far been taken to this practice (see Government Resolution, Revenue Department, No. 3271, dated 12th October 1938). Consequently the same procedure should be followed until it is held to be illegal by the High Court.

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21/5.

Remembrancer of Legal Affairs.

U.R. to R.D. No. 4628, dated the 21st May 1941.

M.V.V. 24/4.

R.I.No.6256 dated 17-7-1941.

Submitted.

2. Attention is requested to R.L.A's opinion No.4626, dated the 21st May 1941 in which R. L.A. advised that Govt. should, as far as possible, try to give effect to the observations of the High Court regarding taking of a kabulayat from Mr. Sathe as regard his right to collect khoti fayda and should take Kabulayats both from Mr. Sathe and Mr. Patki regarding their respective rights if this course is found practicable by R.D. in consultation with the commissionr. Both the R.D. and the Commr. S.D. consider this course as impracticable. R.D. therefore agrees with the Commr. that in this case Mr. Patki should be recognised as the Khot and a Kabulayat should be offered to him. The papers are shown to the R.L.A. for his further advice.

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3. As it has been found impracticable to take Kabulayats from two persons in respect of their respective rights, the only alternative course which can be suggested is to take Kabulayat from one of the said two persons. As Mr. Patki is the holder of all the rights of the Khot excepting the right to collect Khoti Fayda, a Kabulayat may be taken from him as proposed by the Commr. and R.D. and Mr. Sathe may be left to get redress if any in a civil Court.

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In the circumstances stated by R.D. the only feasible course would be to offer a Kabulayat to Mr. Patki. Papers may be seen and returned.

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R.L.A. Sd.
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U.R. to R.D. No.6759 dated 31-7-1941.

M.V.V.

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The Commissioner, C.D., has raised the following four question for the orders of Government:-

(1) Can a village or dhada attached under section 27 of the Khoti Settlement Act be restored to the body of khots before the end of the revenue year even though no managing khot is in existance?

(2) Can attachment under section 144, Bombay Land Revenue Code, be converted into attachment under section 159, Bombay Land Revenue Code, as soon as arrears accrue without intermediate restoration to the body of khots?

(3) If the answers to the first two questions are in the negative, can the village or dhada be restored to the body of khots immediately after the end of the revenue year even if arrears exist and no managing khot is in existence.

(4) If it can be, can the village or dhada be at once taken over under section 159, Land Revenue Code?

2. Question No.(1) - The legal position as stated by the Revenue Department is correct. Under section 26 of the khoti settlement Act, 1880, when a khoti village is held by two or more co-sharers jointly, one of them is to be nominated every year to receive the inferior holders' rents, to pay the Government dues and generally to perform all other acts required to be performed by the khot under this Act or any other law. The managing khot so nominated is to be given a certificate by the Mamlatdar specifying therein the year for which he is the managing khot (section 29). When for failure of selection or nomination of a managing khot, the Collector under section 27 of the khoti Settlement Act attaches the village under section 144 of the Bombay Land Revenue Code, 1879, this is by way of a precautionary measure to secure punctual payment of the revenue during that year. The attachment is therefore for the same period viz. the year for which the managing khot would have been appointed. The village cannot be restored to the body of the khots before the end of the revenue year if there is no managing khot or if no action is taken under section 145.

Bombay Land Revenue Code,

3. Question No.(2) - The view taken by R.D. is correct the R.L.A.'s opinion No.100-Confl., dated 2nd May 1933, is clear on the point that the attachment under section 144, Bombay Land Revenue Code, cannot be converted into an attachment under section 159. The village is taken under management under section 144 as a precautionary measure to secure payment of land revenue and the Collector cannot take advantage of the arrears which remained to be recovered through no fault of the khots.

4. Question No.(3) - The R.D. view is correct. The village on the expiry of the year is to be restored to the body of the khots even if there are arrears and if no managing khot is appointed for the next year, then the Collector has again to take action under section 144, Bombay Land Revenue Code

5. Question No.(4) - The view taken in R.D. office note is correct. It would not be proper to penalize the khots in such cases although strictly speaking the arrears at the end of the year of management will be arrears of land revenue (see R.L.A's opinion No.9969, dated 5th October 1939).

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Remembrancer of Legal Affairs.

U.R.to R.D. No.6398 dated the 22nd July 1941.

M.V.V.
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Office of the R.L.A.

The question for consideration of the R.L.A. is whether an appeal from the order of a Collector certifying forfeiture under section 10 of the Khoti Settlement Act, 1880, is appealable to the Commissioner under section 203 of the Land Revenue Code, 1879.

2. Section 203 of the Bombay Land Revenue Code, 1879, provides that in the absence of any express provision of this Act or of any law for the time being in force to the contrary an appeal shall lie from any decision or order passed by a revenue officer under this Act or any other law for the time being in force, to that officer's immediate superior, whether such decision or order may itself have been passed on appeal from a subordinate officer's decision or order or not. The words "any other law for the time being in force" relate to law ejusdem generis with the Land Revenue Code (Sonu Janardhan V. Arjun, I.L.R. 39 Bom. 552). The Khoti Settlement Act, 1880, is a law ejusdem genris with the Land Revenue Code. Section 39 of the Khoti Settlement Act states what sections of the Land Revenue Code are applicable and what sections are modified in their application to the villages to which the Khoti Settlement Act extends. Section 203 of the Land Revenue Code is neither excluded from nor modified in its application to the Khoti villages by section 39 of the Khoti Settlement Act. Section 10 of the Khoti Settlement Act also does not provide that an order of the Collector certifying forfeiture shall be final. Consequently the appeal to the Commissioner from the order of the Collector, Ratnagiri, certifying forfeiture under section 10 of the Khoti Settlement Act in the present cas would appear to be competent under section 203 of the Lan Revenue Code (of. R.L.A's opinions Nos. O.Khoti Settlement I, dated 23rd June 1928 and 3315, dated 29th May 1935;

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Desai's Khoti Settlement Act, page 153).

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Remembrancer of Legal Affairs.

U.R. to R.D. No.8163, dated the 17th September 1941.

M.V.V.
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Office of the R.L.A.

It is true that in his opnion No.3052, dated the 23rd May 1934, the R.L.A. has held that in view of section 21 of the Khoti Settlement Act, 1880, entries in the settlement register or other records made by the Recording Officer are not appealable unless they relate to any matter referred to in clause (a) or clause (b) of section 20(1) of the Act. But that opinion only applies to entries made under sections 16,17 or 18 of the Act, whereas the R.L.A.'s opinion No.8163, dated the 17th. September 1941, relates to the question of an appeal against an order passed under section 10 of the Act. The two opinions deal with different matters and therefore cannot be deemed to conflict. The view taken by the R.D. is not correct.

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Remembrancer of Legal Affairs.

U.R. to R.D. No.9283, dated the 28th October 1941.

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Submitted.

In 1939, the amended form of the Kolaba Khoti Kabulayat sanctioned by Govt. was not acceptable to the Khots, and they proposed to file suits to contest the validity of the amended form determined by Govt. On the strength of R.L.A's opinion in his No.13041 dated 15-12-39. the Khots were allowed to pass Kabulayats under protest. In 1940, the khots again applied for permission to pass Kabulayats under protest as the suits were not decided. The Khots were allowed to do this after consultation with the R.L.A., who opined that there was no legal objection to accepting the Kabulayats under protest that year also as such action will not prejudice the position of Government (vide R.L.A's No. 11082 dated 16-12-40). As suits are still pending it is proposed to accept Kabulayats under protest from the Kolaba Khots this year also. Before this is done the papers have again been referred to the R.L.A. The papers may be "seen and returned".

2. There is no legal objection to accepting the Kabulayats under protest this year also."

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R.L.A. Sd. 16/12.

U.R. to R.D. No.10908 dated 17-12-1941.

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